

# Sponsor's Testimony - 1 of 2

Mr. Chairman, members of the committee, I am Representative Joel Boniek, House District 61. I come before you to present House Bill 246, the

## MONTANA FIREARMS FREEDOM ACT

EXHIBIT 1

DATE 1/22/09

HB 246

This bill would exempt from federal regulation under the commerce clause, firearms, accessories, and ammunition made in Montana.

art sec  
1.83  
c.w.s. The commerce clause of the US Constitution allows Congress to regulate trade between states. This serves to prevent unfair trade and tax practices. If goods are moved from the first state, but taxed too heavily in the second state, those goods will be unprofitable in that state or another state.

The problem: The Federal Government now uses the Commerce Clause to regulate nearly any aspect of state and individual matters, claiming a connection with interstate commerce, however tenuous. This could be something like introducing wolves to western states, or regulating the growing of wheat on your own land, because you would not be buying bread from another state, or passing laws about what you can carry to your local school, because the object was obtained in interstate commerce. These are all real examples.

The supreme court has ruled that the commerce clause is not infinitely elastic, but congress still acts like it is. When one law is struck down, they pass another.

This bill would enact legislation to assert the right of the state under the 10<sup>th</sup> amendment of the US constitution to manage its own proper sphere.

This bill also asserts under the 9<sup>th</sup> amendment those rights not granted in the constitution but retained by the people of Montana, and reserves to the people of Montana certain rights as they were understood at the time of statehood.

Further, this bill asserts the rights of the people under the 2<sup>nd</sup> amendment of the US constitution, to keep and bear arms without infringement.

Also, the Montana State Constitution protects firearm rights, under Article 2, section 12.

Points:

\* Why Firearms? This is a right protected by the Constitution. Growing wheat, medical marijuana, wolves, and other things targeted by commerce clause regulations are not identified in the Constitution. The case is stronger and clearer.

\* Why 1 1/2 inches? This allows for the wide of variety of known antique and current or special use Firearms. The old 4 bore shotgun has a bore of more than one inch. An antique blunderbuss has a bell at the muzzle. A 10 gauge goose gun has a bore of almost one inch. A bean bag gun has a large bore, as

## Sponsor's Testimony 1 of 2

do some special purpose signal or flare launchers. With current innovations, there is room for firearms using air, gasses, or even compressed latex.

This also excludes, true field pieces, artillery, or recoilless rocket launchers.

Notice also that excluded are fully auto-loading firearms, and those not able to be handled by one individual.

\*Why Defended by the AG? This avoids having to be prosecuted for a felony firearms violation to get a hearing in court. Usually one has to be charged with a crime or be injured to have standing in court. When this law is passed, the statute needs to be defended by the chief law enforcement officer of the state. (The goal is to get this vetted in court without charges against someone who thinks his actions are legal, but the Federal Government says they are not.)

\*Any firearm made under this authority must be stamped "Made In Montana"

\*This could be a stimulus to Montana industry. Montanans love their firearms, and many would be proud to buy a firearm made in Montana. Others would be happy to start a business, without the onerous and expensive burdens imposed by the BATFE.

The heritage of firearms in Montana is long and strong, and I respectfully ask a DO PASS!

Mr. Chairman, I reserve the right to close. Thank you.